Supreme Court, U.S.
FILED
MAR - 8 2000
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(3)

No. 99-977

In the Supreme Court of the United States

ELEANOR SEBASTIAN, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals correctly held that petitioners had not established a compensable property interest in free, unconditional, lifetime medical care.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-11a) is reported at 185 F.3d 1368. The opinion of the district court (Pet. App. 12a-24a) and its order denying petitioners' motion to alter or amend the judgment (Pet. App. 25a-26a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on August 9, 1999. On October 27, 1999, Chief Justice Rehnquist extended the time within which to file a petition for a writ of certiorari to and including December 8, 1999, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

This case concerns whether petitioners, who are military retirees and widows of military retirees, have a compensable property interest in free, unconditional, lifetime medical care.

1. Before 1956, the statute governing the provision of benefits for military service members, retirees, and their dependents was 5 U.S.C. 301.[1] That provision, however, was very general. It authorized the "head of an Executive department or military department" to "prescribe regulations for the government of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property." 5 U.S.C. 301. In 1956, Congress addressed the issue more specifically by enacting the Dependents' Medical Care Act, 10 U.S.C. 1071 *et seq.* That Act provided that, pursuant to regulations, military retirees "may, upon request, be given medical and dental care in any facility of any uniformed service, subject to the availability of space and facilities and the capabilities of the medical and dental staff." 10 U.S.C. 1074(b). See also 10 U.S.C. 1076(b) (medical and dental care for dependents of retirees subject to same restrictions).

Within a few years, the demand for military medical care had exceeded capacity. Accordingly, in 1966, Congress enacted 10 U.S.C. 1086, which authorized military departments to contract for the provision of civilian health care to retired service members and their dependents. Pursuant to that statute, which provided the

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[1] Before being amended and moved to its current location in 5 U.S.C. 301, that provision appeared at 5 U.S.C. 22 (1952). Because the court of appeals used the current statutory citation (5 U.S.C. 301), see, *e.g.*, Pet. App. 5a, we do as well.

basis for the creation of a program known as the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), military retirees who are not eligible for Medicare benefits (i.e., those who have not reached age 65) may participate in a cost-sharing program for the provision of health services from civilian sources as an alternative to medical care from military facilities.[2] Upon reaching age 65, however, retirees and their dependents cease to be eligible for CHAMPUS benefits. 10 U.S.C. 1086(d)(1). They, however, remain eligible for medical treatment at military facilities on a space-available basis, and become entitled to health care through Medicare under the Social Security Act. See 10 U.S.C. 1074(b).[3]

In 1986, Congress enacted 10 U.S.C. 1097 and 1099 to improve the quality of health care for all service members, including retirees. Section 1097 authorizes

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[2] For out-patient services under CHAMPUS, a military retiree is responsible for payment of a fiscal year deductible of $150 for a single individual, or $300 for a family, together with 25% of all subsequent allowed charges. 10 U.S.C. 1086(b)(1)-(2). For hospitalization, the retiree is responsible for payment of 25% of all allowed charges for inpatient care. 10 U.S.C. 1086(b)(3). A retiree or his family cannot be required to pay more than $7500 for health care costs under CHAMPUS during any fiscal year. 10 U.S.C. 1086(b)(4).

[3] Medicare benefits consist of two parts. Part A provides basic hospital insurance protection, which protects against the costs of hospital care, related post-hospital care, home health services, and hospice care; retirees are automatically entitled to those benefits. 42 U.S.C. 1395c. Part B provides certain physician's services, home health services, laboratory services, and other services not covered under Part A. 42 U.S.C. 1395k (1994 & Supp. III 1997). To obtain benefits under Part B, retirees must enroll, 42 U.S.C. 1395j, and monthly premiums are collected through a deduction from the retiree's social security benefits, 42 U.S.C. 1395s.

the Secretary of Defense to enter into contracts with a variety of health care providers and insurers for the provision of basic health care services to service members and their dependents. The Secretary is authorized to contract with health maintenance organizations, 10 U.S.C. 1097(a)(1), preferred provider organizations, 10 U.S.C. 1097(a)(2), individual providers, medical facilities, or insurers, 10 U.S.C. 1097(a)(3), and consortiums of such entities, 10 U.S.C. 1097(a)(4). The statute authorizes the Secretary to "prescribe by regulation a premium, deductible, copayment, or other charge for health care provided under this section." 10 U.S.C. 1097(e) (1994 & Supp. IV 1998).

Section 1099 of Title 10, in turn, requires the Secretary of Defense to establish a health enrollment system through which beneficiaries of the military health care program can choose a health care plan from eligible plans designated by the Secretary. Congress stated that such a plan may consist of:

> (1) Use of facilities of the uniformed services. (2) The Civilian Health and Medical Program of the Uniformed Services. (3) Any other health care plan contracted for by the Secretary of Defense. (4) Any combination of the plans described in paragraphs (1), (2), and (3).

10 U.S.C. 1099(c)(1)-(4).

2. Consistent with the above-described statutory schemes, the military departments have, over the years, issued varying regulations to address the availability of medical care for retired service members and their dependents. Those regulations have, for many years, either restricted coverage or made care contingent on certain conditions, such as medical officer approval or the availability of space and facilities.

For example, Naval regulations in force during the 1920s provided that Naval retirees could be admitted to military medical facilities, but only if the retiree obtained authority from a Naval medical officer before being admitted, C.A. App. 117, and a military facility had space available, *id.* at 122. Even then, retirees were given lower priority than active duty service members and reservists, *ibid.*, and were (unlike their active duty counterparts) ineligible for medical treatment from civilian facilities at government expense, *id.* at 118. See also *id.* at 129 (1939 regulation declaring that Naval retirees are not entitled to civilian medical treatment at government expense, but are entitled to treatment in Naval medical facilities "when available upon application, but no expenses for travel in connection with such treatment may be allowed"); *id.* at 131 (1942 regulation, same); *id.* at 134 (1943 regulation, same); *id.* at 137 (1952 regulation, as amended in 1958, with similar provision).

By comparison, Army regulations between 1924 and 1935 did not provide for admission of military retirees to Army hospitals under any circumstances. C.A. App. 85. When those regulations were amended in 1935 to permit the admission of retirees, such admissions were made contingent on facility availability and the discretion of the hospital commanding officer. *Id.* at 88. Admission, moreover, was not available to retirees who required "domiciliary care by reason of age or chronic invalidism." *Id.* at 88-89. See also *id.* at 92, 94 (1950 regulation making treatment subject to the consent of the hospital commanding officer, and barring the admission of retirees suffering from chronic diseases).

The Air Force, from its formation in 1947 until 1951, followed Army regulations. In 1951, the Air Force promulgated a regulation that made hospitalization of

retirees permissible at the discretion of hospital commanders. C.A. App. 112. That regulation, however, barred admission of retirees requiring "domiciliary-type care because of age or chronic invalidism." *Ibid.* And dependents of retirees were permitted medical treatment only if "practicable and accommodations for their care are available." *Id.* at 107.

In 1966, the Department of Defense (DoD)—pursuant to 5 U.S.C. 301 and 10 U.S.C. 1086—created a program of health care for all service members, including retirees, known as CHAMPUS. See 32 C.F.R. Pt. 199.

> [CHAMPUS is] essentially a supplemental program to the Uniformed Services direct medical care system. The Basic Program is similar to private insurance programs, and is designed to provide financial assistance to CHAMPUS beneficiaries for certain prescribed medical care obtained from civilian sources.

32 C.F.R. 199.4(a).

Most recently, in 1995, DoD created a new program of health care for service members pursuant to 10 U.S.C. 1097-1099.[4] Under that program, which is known as TRICARE, retirees and their dependents continue to be eligible to receive care in military medical facilities subject to availability (although active duty service members and their dependents continue to have priority over retirees). 10 U.S.C. 1074(b); 32 C.F.R. 199.17(d)(1). A significant feature of TRICARE is that it offers CHAMPUS-eligible beneficiaries (i.e., retirees not eligible for Medicare) a choice among three

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[4] The program was phased in over a period of several years. 32 C.F.R. 199.17.

programs: (1) "TRICARE Prime," which is a health maintenance organization-type program, 32 C.F.R. 199.17(d);[5] (2) "TRICARE Extra," which provides treatment through a preferred provider network on a case-by-case basis, 32 C.F.R. 199.17(e);[6] and (3) "TRICARE Standard," where enrollees receive the same benefits as under standard CHAMPUS, 32 C.F.R. 199.17(f).

3. Petitioners are military retirees and the widows of military retirees. They filed suit in December 1996 alleging that the military departments had promised service members that, upon retirement, they and their dependents would continue to "receive free and unconditional lifetime health care in military medical facilities." Pet. App. 13a. Petitioners argued that "in recent years, the military has failed to live up to this promise and that, as a result, retired service members' 'deferred compensation' (in the form of health care benefits) has

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[5] CHAMPUS-eligible retirees and their dependents are eligible to enroll in TRICARE Prime after enrollment by all active duty members and any dependents who wish to participate. 32 C.F.R. 199.17(c)(3). Enrollment in TRICARE Prime costs $230/year for an individual retiree, or $460/year for family coverage. 32 C.F.R. 199.18(c)(2)(iii). Retirees enrolled in TRICARE Prime (1) do not pay annual deductibles, (2) pay low, pre-set copayments for services received from TRICARE providers, (3) have a primary care manager who coordinates medical treatment and services, and (4) have their annual out-of-pocket costs for health care capped at $3000. 32 C.F.R. 199.17(m), 199.18(f).

[6] Retirees in TRICARE Extra do not pay an annual premium. Rather, so long as they choose a TRICARE provider, and after they pay an annual deductible, they pay cost-shares for medical services that are lower than the costs they would otherwise pay under TRICARE Standard. 32 C.F.R. 199.17(m). Like TRICARE Standard, TRICARE Extra annual out-of-pocket costs are capped at $7500.

been taken without just compensation." *Ibid.* Petitioners requested: (1) a declaration that the government took their property without just compensation in violation of the Fifth Amendment; and (2) an award of damages for the taking of their property, such damages not to exceed $10,000 each. *Id.* at 2a.[7]

The district court dismissed the complaint. Pet. App. 12a-24a. First, the court held that petitioners' claims were not reviewable under *Mindes* v. *Seaman*, 453 F.2d 197 (5th Cir. 1971). Pet. App. 14a-17a. The court concluded that, because petitioners "cannot establish a property right in the benefits that they claim are owed to them," *id.* at 15a, petitioners were essentially challenging the military's discretionary decision on how to allocate military resources. Such a challenge, the court held, is not justiciable. *Id.* at 15a-16a.

Alternatively, the court held that petitioners had failed to state a claim because their putative entitlement to free, unconditional, lifetime medical benefits was not supported by statute or regulations. Pet. App. 19a-24a. The court explained:

> In the absence of any statutory or regulatory entitlement upon which to base their alleged property interest, plaintiffs' claim is founded only on promises that were made to retired service members at the time they enlisted, or agreed to continue their military careers. It is well established, however,

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[7] Petitioners brought this action in district court under the Tucker Act, 28 U.S.C. 1346(a)(2), which confers on district courts original jurisdiction, concurrent with the United States Court of Federal Claims, over civil actions against the United States "not exceeding $10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation."

> that such representations create no legal entitlement.

Id. at 23a (citation omitted). Petitioners filed a motion to alter or amend the judgment, which the district court denied. Pet. App. 25a-26a.

3. The court of appeals affirmed. Pet. App. 1a-11a. The court began its analysis by observing that a service member's right to military benefits "must be determined by reference to the [governing] statutes and regulations . . . rather than to ordinary contract principles." *Id.* at 4a (quoting *United States* v. *Larionoff*, 431 U.S. 864, 869 (1977)). The court examined the relevant statutes and concluded that Congress had never authorized free, unqualified, lifetime health care for retired service members; nor did it authorize military recruiters to promise such care unconditionally. Pet. App. 5a. Canvassing military regulations dating back to the 1920s, the court concluded that "[n]othing in these regulations provided for unconditional lifetime free medical care or authorized recruiters to promise such care as an inducement to joining or continuing in the armed forces." *Id.* at 7a. Because petitioners failed to show that "they have a right to the health care they say was 'taken' by the government," the court held, petitioners had failed to state a claim upon which relief may be granted. *Ibid.*[8]

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[8] The court of appeals also rejected petitioners' contention that the district court erred in denying their motion to alter or amend the judgment. Pet. App. 10a-11a. The court did not address the district court's holding that petitioners' claims were not justiciable. *Id.* at 10a.

ARGUMENT

The decision of the court of appeals is correct and does not conflict with any decision of this Court or with any decision of the courts of appeals.[9] Further review is therefore not warranted.

1. Petitioners' primary argument is that the courts below misread the (now mostly superseded) regulations that, according to petitioners, gave them a property interest in free lifetime medical care. See Pet. 11-12. Petitioners' construction of those regulations, however, was thoroughly considered by both the district court and the court of appeals, and rejected by both. See Pet.

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[9] In fact, the lower federal courts have consistently rejected claims like petitioners'. For example, in *Schism* v. *United States*, 19 F. Supp. 2d 1287 (N.D. Fla. 1998), appeal pending, No. 99-1402 (Fed. Cir.), the district court squarely rejected a claim indistinguishable from petitioners', holding that "the regulations in place before 1956 did not establish free lifetime medical care for retirees; instead, those regulations provided that care would be provided if space were available, or at the discretion of the facility's medical officer. Section 1074(b), enacted in 1956, continued the policy established by [then-extant] regulations." 19 F. Supp. 2d at 1295. See also *Abbott* v. *United States*, 200 Ct. Cl. 384 (rejecting claim by military retirees that the government deprived them of property in violation of the Fifth Amendment when it changed the retirement system in contravention of their expectation), cert. denied, 414 U.S. 1024 (1973); *Andrews* v. *United States*, 175 Ct. Cl. 561 (1966) (holding that military retirees have no vested right in particular retirement benefits because the conferral of such benefits lies within the exclusive control of Congress, which is free to make adjustments); cf. *Denny* v. *United States*, 171 F.2d 365, 366 (5th Cir. 1948) (statutory and regulatory "obligation of the Government to provide medical service to Army dependents [is] discretionary in character" (Federal Tort Claims Act suit)), cert. denied, 337 U.S. 919 (1949); *Grigalauskas* v. *United States*, 103 F. Supp. 543, 548 (D. Mass. 1951) (same), aff'd, 195 F.2d 494 (1st Cir. 1952).

App. 5a-7a (court of appeals); *id.* at 19a-23a (district court). Petitioners offer no compelling reason to believe that further review of the same regulation-specific contentions would yield a different result.

a. In any event, the text of the relevant statutory provisions contradicts petitioners' claim to an unqualified property interest in free lifetime medical care. Section 1074(b) of Title 10, which was originally enacted in 1956, states that military retirees "may, upon request, be given medical and dental care in any facility of any uniformed service, subject to the availability of space and facilities and the capabilities of the medical and dental staff." 10 U.S.C. 1074(b). As the court of appeals correctly held, that provision demonstrates that medical benefits for retirees were a conditional privilege rather than an unconditional entitlement, because they were benefits that a retiree "'may' [receive] upon request * * * 'subject to [their] availability.'" Pet. App. 5a. Military retirees today, moreover, still retain the right to treatment in military medical facilities subject to the same conditions, *e.g.*, availability. See 32 C.F.R. 199.17(d)(1) (explaining that military retirees may be admitted to military medical facilities on a space-available basis, and establishing priorities among service members).

Nor does 5 U.S.C. 301 support petitioners' claim. That statute authorizes the military departments to "prescribe regulations for the government of [the] department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property." 5 U.S.C. 301. However, it "state[s] nothing about health care." Pet. App. 5a. Consequently, it cannot support petitioners' claim to an "unconditional right to lifetime free medical care." *Id.* at 4a.

b. That Congress views medical benefits for retirees as a conditional privilege is further demonstrated by reforms Congress enacted in 1966, see pp. 2-3, *supra*, and 1986, see pp. 3-4, *supra*. Neither of the programs created by those enactments (CHAMPUS and TRICARE) entitles service members to free lifetime medical care. Rather, both programs authorize cost-sharing programs in civilian medical facilities for retirees under age 65 as an alternative to medical care in military facilities. When retirees reach age 65, they lose their eligibility for CHAMPUS and TRICARE; but they become entitled to health care through Medicare under the Social Security Act. As the Senate Armed Services Committee explained, that coverage fulfills the Nation's moral obligation "to attempt to provide health care to military retirees who believed they were promised lifetime health care in exchange for a lifetime of military service." S. Rep. No. 29, 105th Cong., 1st Sess. 295 (1997). Congress's view of its obligations to military retirees—and its judgment that they were not entitled to unconditional, free medical care for life—should be given substantial weight. See *Weiss* v. *United States*, 510 U.S. 163, 177 (1994) (judicial deference is "'at its apogee' when reviewing congressional decisionmaking in [the military context]").

Such deference is especially appropriate here. The Senate Armed Services Committee signaled its awareness of the precise issue raised in petitioners' complaint and unequivocally rejected the notion that retirees are entitled to unconditional, free medical care for life. See, S. Rep. No. 29, *supra*, at 295. The "customary deference accorded the judgments of Congress [in the military context] is certainly appropriate when, as here, Congress specifically considered" a constitutional ques-

tion that is later raised in litigation. *Rostker* v. *Goldberg*, 453 U.S. 57, 64 (1981).

2. Petitioners argue that, even if 5 U.S.C. 301 and 10 U.S.C. 1074 do not provide support for their property claim, those statutes empowered the military departments to promulgate regulations entitling retirees and their dependents to free lifetime medical care. "[C]ourts," they contend, "cannot refuse to recognize a funded property right" embedded in congressionally authorized regulations. Pet. 13. The court of appeals correctly rejected that argument.

First, contrary to petitioners' contention, 5 U.S.C. 301 and 10 U.S.C. 1074 do not empower the military departments to confer a property right on retirees and their dependents in free lifetime health care. As the court of appeals held, Section 301 does not authorize the promulgation of "substantive rules" of entitlement. Pet. App. 5a (quoting *Chrysler Corp.* v. *Brown*, 441 U.S. 281, 310 (1979)). And Section 1074(b), by its terms, explicitly refutes petitioners' claimed entitlement to unconditional, lifetime health care. By its terms, Section 1074(b) merely provides that retirees "may" receive certain types of care, subject to availability and other conditions. See Pet. App. 5a; p. 11, *supra*.

Second, the court of appeals examined military regulations dating back to the 1920s and held that petitioners' claim of entitlement was not grounded on any judicially cognizable regulation. Pet. App. 5a-7a. As that court observed, none of the regulations cited by petitioners purports to "provide an absolute and unconditional right to care." *Id.* at 5a. Nor do any of them authorize recruiters to promise "unconditional lifetime free medical care * * * as an inducement to joining or continuing in the armed forces." *Id.* at 7a. Rather, "for many years [the regulations] have made

clear that whether a retiree could receive medical care depended on the fulfillment of various conditions," such as the medical officer's permission, the availability of space and facilities, the capabilities of the staff, and the need to dedicate resources to maintaining and restoring the health of active duty members. *Id.* at 5a. See also pp. 4-7, *supra* (describing historical regulations).

Contrary to petitioners' contention, Pet. 8-9 & n.2, the Navy's *Bluejackets' Manual* and the Army's *Soldier's Guide* do not contain binding promises of lifetime medical care for retirees and their dependents. The *Bluejackets' Manual*—originally written in 1902 by Lieutenant Ridley McLean, USN, and updated periodically by the Naval Institute in Annapolis, Maryland—is essentially an illustrated textbook containing practical information for Naval enlisted personnel and their families. The Army's analogue to the *Bluejackets' Manual* is the *Soldier's Guide*, which is a general information and reference manual that is made available to new enlistees to help them adjust to Army life. Neither of those publications—nor the alleged (and unauthorized) promises made by military recruiters—constitutes a regulation that can establish policy, bind the military, or give rise to enforceable rights to benefits for service members.

Nor, contrary to petitioners' contention (Pet. 12), did the Federal Circuit err in refusing to rely on isolated language in a short-lived 1947 Naval "Medical Manual" regulation. The court correctly held that the Manual—which provided that retired Naval officers in need of hospital care "shall" be admitted to a Navy hospital upon application and presentation of suitable identification, Medical Manual §§ 4132.1, 4132.2 (1945) (as amended June 1947)—did not create a property right for retirees, but rather "provided guidelines for the

Navy's Medical Department * * * and covered only the [eight-year] period when it was in effect." Pet. App. 7a. Moreover, given "the general pattern of the military regulations that provides medical care to retirees only when facilities and personnel were available," *ibid.*, the court correctly "decline[d] to read into the [Manual] the creation of * * * an enduring and broad right to unconditional free lifetime medical care." *Ibid.* Indeed, the Manual nowhere purports to establish a right for military retirees to receive medical care in perpetuity; and nowhere does it state that the procedures it sets forth cannot subsequently be altered.

3. Finally, the Federal Circuit correctly rejected petitioners' assertion (Pet. 12) that *United States* v. *Larionoff*, 431 U.S. 864 (1977), mandates a ruling in petitioners' favor. The statutes and regulations at issue in *Larionoff* originally provided for the payment of a variable re-enlistment bonus to service members with certain critical skills. *Id.* at 867. After the plaintiffs re-enlisted, but before they began serving their new terms, the relevant qualifications and award levels were changed. *Id.* at 868. Interpreting the statutes and their amendments, this Court concluded that the right to the bonuses attached at the time the service members *agreed* to re-enlist, and not later on, when they began *to serve* their terms of re-enlistment. The Court therefore concluded that the claimants were entitled to receive bonuses based on the qualifications and award levels in effect at the time they agreed to re-enlist, notwithstanding subsequent changes. *Id.* at 873, 879.

Larionoff has no bearing on this case. Here, the question is not when a statutory entitlement attached. It is whether a statute or regulation *ever* created an

entitlement in the first place. As the Federal Circuit stated:

> *Larionoff* is distinguishable from the present case in a critical respect. The statute there explicitly authorized the services to provide the bonus [to eligible service members]. In the present case, in contrast, neither the statutes nor the regulations authorized the military to promise retirees free lifetime medical care.

Pet. App. 9a.

Petitioners likewise err in asserting (Pet. 8, 10) that the decision of the court of appeals conflicts with *Board of Regents* v. *Roth*, 408 U.S. 564, 576 (1972). As the Court explained in that case, property interests do not arise merely because an individual has an "abstract need or desire"; nor do they arise merely because he has a "unilateral expectation." *Id.* at 577. Instead, property rights "are created and their dimensions are defined by" understandings derived from an applicable source of law. *Ibid.* Here, the district court and court of appeals alike reviewed the relevant sources of federal law—the statutes and regulations—and found that they did not support petitioners' claimed property interest. Their analyses thus do not represent a departure from *Roth*; they are instead applications of it.

As the court of appeals observed, petitioners' claim ultimately rest on the notion that, "as a matter of policy and fairness," the government should dedicate more resources to caring for retired service members and their dependents and thereby "furnish the free medical care" they were allegedly promised by recruiters. Pet. App. 8a. Congress, however, has specifically addressed (in a series of statutes and hearings) its moral obligations to military retirees, see pp. 11-12, *supra*, and

continues to do so.[10] Discretionary decisions on how to allocate resources in the military are—at least in the absence of a property interest in the claimant—a matter properly to be determined by the political branches, rather than the courts. *Mindes* v. *Seaman*, 453 F.2d 197 (5th Cir. 1971). Further review by this Court is therefore not warranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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MARCH 2000

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[10] The "availability of medical care for military retirees and their families [is] an issue of tremendous concern" to Congress. H.R. Rep. No. 532, 105th Cong., 2d Sess. 315 (1998). In its continuing effort to determine how to provide retirees with "quality, affordable health care," Pub. L. No. 105-85, § 752, 111 Stat. 1823-1824, Congress is actively considering many options, "including TRICARE eligibility and enrollment, Medicare subvention, Medicare Partnering, FEHBP, Medigap supplemental policies, Medicare risk plans, and CHAMPUS as a second-payer to TRICARE." H.R. Rep. No. 532, *supra*, at 316. Congress's activity, authority, and obvious interest in the field of military retiree health care underscores the fact that the issues raised by petitioners are more properly directed to the Legislative, not the Judicial, Branch.